

HOUSING LEGAL RESOURCE GUIDE



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HOUSING LEGAL RESOURCE GUIDE

New York State Housing Issues
Legal Resource Guide

Information for
Renters and Mobile Home Park Tenants
and about
Land Contracts and Home Ownership

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Basic Tenants' Rights

What can I do when I receive a Notice of Eviction?

In New York State, most evictions are based upon one of the following three grounds: 1) because the tenant did not pay rent, 2) because the tenant violated a provision of the lease, or 3) because the landlord is terminating the tenancy. For each of these grounds, the landlord must give the tenant a notice.

If a landlord wants to evict a tenant on the basis of failure to pay rent, he/she must give the tenant a 14 day demand for rent. The demand must tell the tenant how much rent is owed and for which period of time. The demand must state that if the tenant does not pay the rent within the 14 days that an eviction proceeding will be commenced.

If a landlord wants to evict a tenant on the basis of lease violation, the landlord must serve the tenant with a notice describing the lease violation, that the landlord has terminated the lease on the basis of the lease violation as of a certain date and that an eviction proceeding will be commenced if the person is not out by that date.

If a landlord wants to evict a tenant on the basis of termination, or the end, of tenancy, the landlord must serve a tenant who rents on a month-to-month basis with a least one complete month's notice that the tenant can no longer live in the apartment/house after a specified date. For example, in a month to month tenancy, a landlord who serves a notice to evict a tenant on June 2, cannot evict the tenant sooner than July 31, because at least one who month must comprise the notice. The notice must also

state that the landlord will commence eviction proceedings if the tenant is not out by that date.

Also, the law also requires a longer notice for a tenant who has resided in the subject property for certain period of time.

If a tenant has resided less than one year or has a lease of one year or less, a **30 day notice is required.**

If a tenant has resided more than one year or has a lease of two years or less, a **60 day notice is required.**

If a tenant has resided more than two years, or has a lease for a period of more than two years, a **90 day notice is required.**

IMPORTANT: When a tenant receives any of the above notices, the landlord cannot evict the tenant by himself/herself if the tenant does not leave by the date of the notice. The landlord has to go to court to start an eviction proceeding. Thus, if the notice says you must be out by April 30th and you are not out by that date, the landlord will still have to go to court.

When you receive a notice from the landlord, you may want to pay the rent owed, talk to the landlord about correcting the lease violations, or negotiate with the landlord about a date certain to be out of the apartment/house.

What can I do when I receive a Notice of Petition and Petition in an eviction proceeding?

To begin an eviction proceeding, the landlord must serve a tenant with a Notice of Petition and Petition.

The Notice of Petition basically tells the tenant that an eviction proceeding has been started and when and where the court date is. The Petition must tell the facts that the landlord proposes to prove in the eviction case. The landlord must fill these papers out correctly or the tenant can ask the court to dismiss the case. Ask a lawyer to review the paperwork to see if it has been filled out correctly. Make sure to go to the court date.

IMPORTANT: If you do not appear on the date and time at the court indicated on the Notice of Petition, the judge can issue a default judgment against you. This means the judge will issue an order granting all of the relief that the landlord has requested. Even if a tenant does not have a defense, they may be able to ask the judge for more time to move out of the property.

What are possible defenses I may have in an eviction proceeding as a tenant?

A tenant may have one of the following defenses:

1. The initial notice or Notice of Petition and Petition were not served correctly;
2. The initial notice or Notice of Petition and Petition were not written correctly by the landlord;
3. The tenant has the money to pay the rent (the tenant should bring his/her money to court);
4. The landlord accepted rent after the date set by the landlord as the end of the tenancy. (For example, if the landlord says you have to be out by April 30th and then accepts May's rent, the landlord will have to issue another notice before proceeding to court);
5. The landlord is evicting the tenant in retaliation for the tenant's complaint to a governmental

- agency about the landlord's alleged violation of a health and safety code;
6. The landlord knew about the lease violation for a long period of time and did not take action. (For example, the tenant could argue the landlord knew the tenant had a cat for one year but did not do anything about it, and therefore, waived his/her right to use that fact as a ground for the eviction).
 7. The landlord violated the warranty of habitability by not providing the tenant with a safe, decent, habitable rental unit (Real Property Law Section 235-b). Therefore, the tenant is entitled to some amount of rent abatement (or credit).

IMPORTANT: If you think you have a defense, you should consult with an attorney to determine how to correctly raise these defenses.

What if I cannot find an attorney to represent me by the first court date?

You should appear in court at the correct date and time. You have the right to ask the judge for an adjournment to obtain an attorney. The law provides that both the tenant and the landlord are entitled to a 14 day adjournment (can only be shorter upon agreement by both sides). After that adjournment, you may request a further adjournment but that is at the discretion of the judge. Therefore, start your efforts to obtain an attorney as soon as you can. Call the local legal services office. If you do not qualify, call several attorneys in your area and ask how much they would charge to represent you.

What will happen to me after the judge orders an eviction?

The Sheriff must serve you with a warrant of eviction which shall give you at least 14 days to vacate the property. The eviction cannot take place until 14 days after the tenant has been served with the warrant of eviction. If the tenant is still in the property after the 14 day period, the Sheriff can remove the tenant and the tenant's belongings and place them on the curb.

What can I do if my landlord refuses to return my security deposit?

If a landlord refuses to return a tenant's security deposit, the tenant can file a Small Claims Court action against the landlord. To file a Small Claims Court action, go to the local city/town or village court clerk and ask for a form. The fee to file this claim is \$15 (\$10 in town and village courts) if the tenant is asking for \$1000 or less or \$20 (\$15 in town and village courts) if the tenant is asking for an amount greater than \$1000. The limit for a small claims action is \$5000, except in town and village courts, where the limit is \$3000. You can find a guide on Small Claims at www.rurallawcenter.org.

Importantly, the 2019 law change makes it easier to get the return of your security deposit. It also penalizes the landlord for wrongfully withholding your security deposit. There are very specific rules that the landlord must follow. If you have a problem with return of your security deposit, please contact an attorney or legal service office for assistance.

What can I do if my landlord will not make necessary repairs?

A landlord has to provide a tenant with a safe, decent and habitable place to live. If a landlord fails to provide heat, hot water, proper plumbing, etc., a tenant may have a claim against the landlord for breach of Warranty of Habitability.

If the landlord refuses to make a repair and the problem causes a risk to the tenant's health or safety, the tenant should consult with an attorney. With proper legal advice, the tenant may take the following steps:

- Write the landlord a letter describing the problem and asking that the problem be fixed. State that if the repair is not made within a reasonable period of time (give a specific date), the tenant will gather estimates and use rent money to make the repair.
- If the problem is not fixed by the date specified, the tenant could gather at least 3 estimates. Hire the contractor with the lowest estimate. Obtain a detailed receipt as to the work that was performed. Send copies of the estimates and receipt to the landlord. Deduct the amount of the repair from the rent.

IMPORTANT: If a tenant deducts money from the rent for a repair, the landlord can start an eviction proceeding against that tenant for non-payment of rent. The tenant will need to show all paperwork to the judge (letter to landlord telling the landlord what the tenant intends to do, estimates and receipt). The judge will decide if the tenant has provided sufficient evidence to stop the eviction.

If a tenant withholds rent until the repair is done, the tenant should not spend any of the rent money withheld. If the landlord starts an eviction proceeding against that tenant for not paying rent, the tenant will have the money to pay the rent if the judge does not find that there was a breach of the Warranty of Habitability or if the judge finds that the rent should be lowered for less than the full amount.

What can I do if my landlord turns off the electricity?

If your landlord is responsible to pay for electricity and has the electricity turned off, you should:

- Contact the landlord and ask for the electricity to be turned on;
- Contact the utility company and ask for the electricity to be turned on; or
- Contact the Health Department and ask for assistance for the power to be turned back on.

What can I do if the landlord turns off my water?

If your landlord is responsible to pay for water and has the water turned off, you should:

- Contact the landlord and ask for the water to be turned on;
- Contact the utility company and ask for the water to be turned on; or
- Contact the Health Department and ask for assistance to get your water back on.

What can I do if my landlord discriminates against me?

The Federal Fair Housing Act prohibits housing discrimination on the basis of sex, family status (children under 18), race, color, national origin, religion, and disability. If you believe you have been treated unfairly, call the U.S. Department of Housing & Urban Development's (HUD) Housing Discrimination Hotline at 800- 669-9777.

You can also assert your fair housing rights under New York State Law.

Mobile Home Park Tenants' Rights

Are mobile home park residents entitled to a written lease?

Before moving into a mobile home park (defined as three or more mobile homes on one piece of privately owned land), a tenant must be offered the chance to sign a written lease for at least one year. The lease must have attached to it a list of tenants' rights as set forth in New York law.

Are mobile home park residents entitled to a written lease?

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Tenants must sign the lease within 30 days of receiving a proposed lease from the owner. If the lease is not signed, the tenant does not have a right to another year long lease for the next twelve months. At the end of the 1 year lease, the tenant should be offered a written lease for the next year. The "good standing" of the tenant requirement was removed, so that a lease should be offered to any existing tenant.

When can the landlord of a mobile home park increase the rent?

Before moving into a mobile home park, a tenant must be offered the chance to sign a written lease for at least one year. This means the tenant will be guaranteed a certain rent for that time period. If a tenant has no lease, the owner can increase the rent upon 90 days written notice. There are limitations on the amount of the increase of rent, with a 3% increase allowed as of right, and an additional 3% if the landlord's costs have increased. The second increase can be challenged by the tenant.

When can the landlord of a mobile home park evict a tenant?

Tenants who do not own their own mobile home can be evicted at the end of their lease or upon 30 days notice if they are a month-to-month tenant.

A landlord can commence eviction proceedings against a tenant who has failed to pay the rent after giving a tenant a written demand for rent at least 30 days before starting the eviction proceeding.

A landlord can commence eviction proceedings against a tenant who has violated a lease term or valid mobile home park rules and regulations. To proceed on this ground, the landlord must first give the tenant written notice that they have 10 days to correct the violation. If the problem is not corrected within 10 days, the owner may serve a notice to vacate within 30 days. These notices must be provided before the landlord can commence an eviction action.

A landlord can also propose a change of use of the property where the mobile homes are located. In this situation, the landlord must serve the notice of the change of use upon all of the mobile home owners that are affected. Tenants may not be evicted for a change of use until two years has passed, giving the tenants sufficient time to make arrangements for relocation of their mobile homes.

If a judge issues an order of eviction against a tenant in a mobile home park, how much time does the tenant have to move out?

If a tenant does not own the mobile home, the tenant will be evicted by the Sheriff if the tenant is not out within 72 hours of being served with the warrant of eviction.

If a tenant owns their own mobile home and the tenant is being evicted for non-payment of rent, the tenant must be out within 30 days of being served with the warrant of eviction.

If a tenant owns their own mobile home and the tenant is being evicted for violating a term of the lease, the tenant usually must be out within 90 days of being served with the warrant of eviction.

What if I have entered into a rent-to-own agreement with the landlord?

If you and the landlord have entered into an agreement where you will own the mobile home at the end of a specified period of payments, you have specific rights and protections. This includes a written, clear agreement as to the terms of the payment, the right to receive documentation of ownership of the mobile home upon the completion of payments, and methods to determine the appropriate value of the mobile home. You should consult with an attorney about additional rights that are afforded to tenants/rent-to-own tenants before you enter into such an agreement.

Land Contracts

What is a Land Contract?

A Land Contract is a contract between a buyer and a seller of a piece of real property. Under the terms of Land Contracts, the buyer makes regular payments to the seller, but does not have the deed transferred until all payments are made.

What should I do before I sign a land contract?

1. Contact an attorney who will represent your interests;
2. Complete a Title Search (make sure the seller is the owner of the property, the taxes are paid up, there are no liens against the property such as a mortgage or judgment, and the seller has good title to the property);
3. Hire an Inspector (make sure there are no serious structural and/or environmental problems);
4. Make sure the proposed land contract is able to be recorded by the County Clerk's office (a recordable land contract must have a description of the property exactly as the property is described in the deed and the land contract must be signed in front of a notary public in the same form used to acknowledge a deed).

What should I do if I have a problem with my land contract?

1. Contact an attorney.
2. Do not abandon the home.
3. If the owner commences a proceeding to evict you, contact an attorney. Many times an owner will start a proceeding to evict a buyer on a land contract. This proceeding does not belong in the city, town or

village justice court. Under the terms of a Land Contract, you are not a renter. You may need an attorney to argue that this kind of case must be heard in Supreme Court or County Court.

Home Ownership

Where can I find resources to help rehabilitate/repair my home?

Communities and nonprofits may receive funding from the New York State Community Development Block Grant Program (CDBG) or HOME Program to provide residents with rehabilitation assistance. You may also receive help with repairs that improve energy utilization by contacting the local weatherization program if you qualify for the program. This program is usually administered by your local community action program. Eligible applicants may also obtain funds to repair through their local Department of Social Services.

To determine whether your community has received these funds and how to apply, you may contact the nearest HUD-certified housing counseling agency. Call 1-800-569-4287 to find the nearest Housing Counseling Agency.

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What is a reverse mortgage or Home Equity Conversion Mortgage?

A Home Equity Conversion Mortgage is a type of reverse mortgage administered through a program designed to allow older adults to change the equity in their home into cash while the individual continues to reside in the home. The terms of payment can be for a fixed period of time or allow the individual to remain in their home for the rest of their life. You should consult with an attorney or housing counseling agent before entering one of these programs.

What can I do if I cannot afford my mortgage payments anymore?

You should contact an attorney or housing counselor immediately to evaluate your options. Call 1-800-569-4287 to find the nearest Housing Counseling Agency. You may have several options, including 1) ask for a hardship period, 2) work out a repayment plan, 3) refinance the loan, or 4) sell the property.

What can I do if I receive a Summons and Complaint to foreclose my home?

If you are served a Summons and Complaint, you should carefully read the Summons. The Summons will tell you how many days you have to “answer” the Complaint from the day which you were served. Most Summons give you 20 days to “answer” the Complaint. You should contact an attorney immediately to determine if you have any defenses to the claims.

IMPORTANT: If you do not answer the Complaint within the number of days specified, the judge can issue a default judgment against you. This means the judge can grant the person or company who started the lawsuit all of the relief they requested.

An “answer” is more than just responding to the summons. It is a legal document that states your responses to the allegations made in the complaint and raises any defenses you may have. Your original answer must be filed with the Clerk’s office. A copy must be served on the attorney for the party that started the court action.

IMPORTANT: If you think you have a defense to a court action or if you are going to lose your home, you should contact an attorney immediately to respond correctly to the court action.

What can I do if a contractor is not doing the work promised?

You should notify the contractor immediately in writing as to what is not being completed or what is not correct. Specify if the wrong materials are being used or how the work is being done incorrectly. State clearly what you want the contractor to do at that point. For example, stop any further work, correct mistakes, etc. Stop any further payment until the work continues as promised in the written contract or until you come to an acceptable written agreement with the contractor as to how the work should proceed. Consult an attorney. You may need to go to Small Claims Court to recover monies already paid if you are unable to reach an agreement with the contractor. You may also want to contact the Attorney General’s Office in your area to file a complaint. See www.oag.state.ny.us to find the closest regional office.

IMPORTANT: If you did not receive a written contract and the work performed was for more than \$500, you may want to write a letter to rescind and cancel the contract for the work. Under New York State law, you are entitled to receive a written contract before work is performed with a right to cancel the contract within 3 days of receipt for most home improvement work.